IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

MFA.No. 320 of 2000(C)

AGAINST THE ORDER DATED 12/01/99 IN WCC.21/1995 IN THE COURT OF THE COMMISSIONER FOR WORKMEN'S COMPENSATION,THIRUVANANTHAPURAM.

.....

APPELLANT/ 5TH OPPOSITE PARTY:

THE MANAGER, THE ORIENTAL INSURANCE COMPANY LIMITED, TRIVANDRUM, NOW REPRESENTED BY ITS ASSISTANT MANAGER, MOTOR THIRD PARTY CLAIM CELL, M.G. ROAD, KOCHI-35.

BY ADV. SRI.MATHEWS JACOB.

RESPONDENTS/APPLICANTS AND OPPOSITE PARTIES 1 TO 4:
----

1. **SMT. AYSHA BEEVI, VYRASSERIL PUTHEN VEEDU, MANGARAM MURI, KONNI, PATHANAMTHITTA DIST.**
2. **SHEENA (MINOR), VYARASSERIL PUTHEN VEEDU, MANGARAM MURI, KONNI.**
3. **MUFITHA (MINOR) -DO- -DO-.**
4. **SMT. T.M. SAFIYA -DO- -DO- (MOTHER OF DECEASED)**
5. **STATE OF KERALA, REPRESENTED BY DISTRICT COLLECTOR, PATHANAMTHITTA.**
6. **FOREST RANGE OFFICER, KONNI.**
7. **CHANDRASEKHARA PILLAI, MANGALAPALLIL VEEDU, KULATHOOPUZHA.**

8. M.A. SAIDHE AHAMED, S/O. AHAMMED RAWTHER, MULAKKAL VEEDU, PAZHUKKUPALLY, MOOVATTUPUZHA.

(MINOR RESPONDENTS 2 AND 3 ARE REPRESENTED BY THEIR MOTHER 1ST RESPONDENT).

BY GOVERNMENT PLEADER SRI. K.C. SANTHOSHKUMAR.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 2597/2001 IN M.F.A. NO. 320/2000

DISMISSED

SD/- J.B.KOSHY, JUDGE.

08/10/2007. **SD/- K.HEMA, JUDGE.**

//TRUE COPY//

prv.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.320 OF 2000

Dated 8th October, 2007

JUDGMENT

Koshy,J.

A Mahout employed in the Konni Forest Depot of the Forest Department while returning home for lunch after attending the elephants, sustained injuries when a log fell on him from a lorry parked on the roadside. Though he was taken to the Kottayam Medical College Hospital, he succumbed to the injuries on the way to the Hospital. His home was adjacent to the Forest Depot and he was going in the ordinary course to his house as he can be reached by walking. It was proved that he was employed by the Forest Department. The Commissioner found that the accident occurred in the course of employment. He has to go back to the Forest Depot immediately after taking lunch and, therefore, accident occurred in the course of employment and Forest Department was directed to pay compensation. According to the claimants, the accident occurred because driver untied the logs from the lorry and one heavy log fell on his head. The fact that he died due to the fall of the log is proved by medical certificates and evidence. The Commissioner after finding that the Forest Department is liable to pay compensation also held that the appellant insurance company as well as owner and driver of the lorry are liable to reimburse the compensation to the employer after

employer pays the same in view of Section 13 of the Workmen's Compensation Act. It is true that he was not an employee of the lorry. There is no liability for the insurance company to pay compensation under the Workmen's Compensation Act as none of the employees employed in the lorry and covered by the policy have sustained injuries in an accident in the course of employment. But, the insurance company was ordered to pay the compensation under Section 13 of the Workmen's Compensation Act. Section 13 reads as follows:

> **"13. Remedies of employer against stranger.-** Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under Section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid."

It shows that if workmen's compensation case is filed by an employee, employer can get the amount reimbursed from the third party if that party is responsible for the accident. The total amount of compensation awarded was only Rs.83,192/=. The deceased left his wife, two children and mother. The employer did not file any appeal.

If the claimants filed an application before the Motor Accidents Claims Tribunal, the amount of compensation would have been very much higher as they could have claimed compensation from the driver and owner of the lorry and consequently insurance company as a third party. Considering the facts and circumstances of the case, we are of the view that no interference is required in the award in an appeal under Section 30 of the Workmen's Compensation Act.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

tks